Supreme Court, U.S.
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No. 90-1488

In The

Supreme Court of the United States

October Term, 1990

SUE SUTER, et al.,

Petitioners,

v.

ARTIST M., et al.,

Respondents.

On Writ Of Certiorari To United States Court Of Appeals For The Seventh Circuit

JOINT APPENDIX

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Petition For Certiorari Filed March 20, 1991
Certiorari Granted May 13, 1991

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
12/14/88	Filed complaint
12/16/88	Filed plaintiffs' motion for preliminary injunction.
12/16/88	Filed plaintiffs' motion for class certification. Memorandum order entered. Accordingly, this court determines under Rule 23(c)(1) that this action is to be maintained as a class action with respect to the members of each of Class A and Class B. All proceedings in this action shall be conducted in accordance with the provisions of Rule 23.
01/17/89	Injunction hearing begins. Evidence heard in part. Injunction hearing continued to January 18, 1989, at 10:00 a.m.
01/18/89	Preliminary injunction resumed and continued to January 19, 1989, at 9:45 a.m.
01/19/89	Injunction hearing resumed and concluded. Proofs closed.
08/25/89	Filed defendants' motion to dismiss.
11/21/89	Memorandum opinion and order entered. Accordingly, defendants' motion to dismiss is granted only as to plaintiffs' due process claim. It is denied in all other respects.
11/30/89	Filed defendants' supplemental report to the court concerning DCFS's case assignment plan.
12/07/89	Defendants' motion for reconsideration and, in the alternative, motion to certify questions for appeal is denied.

DATE	PROCEEDINGS
01/19/90	Filed plaintiffs' response to defendants' reports to the court.
02/02/90	Filed defendants' reply to plaintiffs' response to defendants' reports to the court.
02/12/90	Filed defendants' supplemental reply regarding defendants' reports to the court and in opposition to plaintiffs' motion for preliminary injunction.
02/20/90	Filed plaintiffs' supplemental submission regarding defendants' caseworker assignment practices.
03/02/90	Filed plaintiffs' motion for amendment and execution of preliminary injunction order.
03/02/90	Preliminary injunction order entered.
03/30/90	Filed defendants' notice of appeal from orders dated 3/2/90 and 11/21/89.
04/03/90	Order entered on plaintiffs' request for mechanism by which defendants' compliance with the preliminary injunction can be assessed.
04/09/90	Order issued: Defendants' motion to stay preliminary injunction pending appeal is denied.
05/09/90	U.S. Court of Appeals issues order granting motion to expedite appeal.
05/16/90	U.S. Court of Appeals issues order denying motion for stay.
06/20/90	Case heard and taken under advisement by panel. Circuit Judge Walter J. Cummings, Circuit Judge Daniel A. Manion, Sr. Circuit Judge Jesse E. Eschbach.

DATE	PROCEEDINGS
06/21/90	Order issued: The preliminary injunction entered by the district court requires that the DCFS assign a caseworker within three working days from the time plaintiffs' cases are first heard in juvenile court as well as within three working days from the time a previously assigned caseworker relinquishes any portion of a case. The case is remanded for entry of factual findings with respect to the current amount of delay in caseworker assignment and reassignment. We request that the findings be made as soon as possible, but no later than 7/26/90.
06/27/90	Order issued: Our order of 6/21/90 remanded this appeal to the district court for entry of factual findings with respect to the current amount of delay in caseworker assignment and reassignment. We now modify that order and direct the district court to enter written findings regarding the factual issues as they existed at the time the injunction issued. (See order for issues.) We request, as before, that these findings be made as soon as possible, but no later than 7/26/90.
07/25/90	District Court enters findings of fact as to the current delays in caseworker assignment and reassignment.
10/29/90	Filed opinion of the U.S. Court of Appeals by Judge Cummings. AFFIRMED Cummings, Eschbach, dissenting, Manion.
10/29/90	Order: Final judgment, AFFIRMED.
11/13/90	Filed petition for rehearing with suggestion for en banc by defendants.

DATE	PROCEEDINGS
12/04/90	Filed answer of Amber B., Brandon W., Willie M., Myron C., Algienan G., Claude F., Sarah B., Artist M., to petition for rehearing and suggestion of rehearing en banc.
12/20/90	Order: Petition for rehearing with suggestion for rehearing en banc is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARTIST M., SARAH B., CLAUDE F., ALGIENAN G., MYRON C., WILLIE M., BRANDON W., and AMBER B., individually and on behalf of all other similarly situated individuals, by their next friend PATRICK T. MURPHY, Public Guardian of Cook County,	)	
Plaintiffs,	)	No. 88 C 10503
v.	)	
GORDON JOHNSON, Director Illinois Department of Children and Family Services and GARY T. MORGAN, Guardianship Administrator, Illinois Department of Children and Family Services,	)	Judge Shadur
Defendants.	)	

INTRODUCTORY STATEMENT

1. This case is a civil rights class action for declaratory and injunctive relief pursuant to the Due Process Clause of the United States Constitution, the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Secs. 620-629, 670-679a (1983) (the "Adoption Assistance Act"), 42 U.S.C. Secs. 1983 and 1988, and 28 U.S.C. Secs. 1331, 1343, 2201 and 2202.

2. Named plaintiffs, Artist M., Sarah B., Claude F., Algienan G., Douglas S., Myron C., Willie M., Brandon W., and Amber B. bring this action on behalf of the class

of children who are or will be placed in the custody or under the supervision of the Illinois Department of Children and Family Services ("DCFS") in the course of an abuse, neglect, or dependency proceeding in the Juvenile Division of the Circuit Court of Cook County, Illinois ("Juvenile Court"). Plaintiffs attack defendants' policy and practice of failing to assign caseworkers in a timely manner.

3. Plaintiffs come into DCFS' custody or under DCFS' supervision because their parents abuse or neglect them or because of their parents' mental or physical disabilities. Some plaintiffs remain in their parents' homes or are placed in private homes under DCFS supervision. DCFS has custody of the other plaintiffs and places them in shelters, group homes, residential institutions, foster homes, and psychiatric hospitals.

4. DCFS receives federal funds under the Adoption Assistance Act. As a condition of receiving these funds, DCFS is required to make reasonable efforts to prevent the removal of children from their families; to make reasonable efforts to facilitate reunification of families when removal has occurred; to notify Juvenile Court or appropriate law enforcement agencies when a child is neglected, abused, or exploited in placement; and to develop case plans and a case review system to ensure that each child in placement is provided appropriate services. 42 U.S.C. Secs. 671(a)(9), (15), 675(1), 675(5).

5. DCFS attempts to satisfy these requirements by assigning a caseworker to each child and her family. The

caseworker is responsible for delivering appropriate services to them and for monitoring the home or other placement to protect the plaintiff.

6. Defendants, however, have a policy and practice of failing to assign a caseworker until four to six weeks after the Juvenile Court proceeding commences.

7. Defendants fail to identify and deliver necessary services during the first weeks of their involvement in plaintiffs' cases. Defendants are aware that this early stage is a critical time for family reunification, family stabilization, and adjustment to foster care or other placements.

8. In addition, defendants have a policy and practice of failing to reassign cases immediately when caseworkers are absent from their caseloads for significant periods of time. Hundreds of cases are without caseworkers for a variety of reasons, including termination, medical leave, and reassignment. As a result, many plaintiffs are without a caseworker for extended periods of time. In one case, for example, a caseworker's entire caseload was uncovered for eight months.

9. By failing to assign a new caseworker immediately when a child's previous caseworker is first withdrawn or absent from her case, DCFS fails to ensure that services will be delivered with continuity, to assess whether new services are necessary for the child and her family when conditions change, and to monitor the child's safety.

10. Defendants have violated their obligations to the plaintiffs under the Adoption Assistance Act to make

reasonable efforts to prevent or eliminate the need for their removal from their homes; to make reasonable efforts to facilitate family reunification when removal has occurred; to notify Juvenile Court or appropriate law enforcement agencies when a child is neglected, abused, or exploited in placement; to provide an appropriate case plan for each of them; and to provide a meaningful case review system.

JURISDICTION

11. This court has jurisdiction over this case pursuant to 28 U.S.C. Secs. 1331, 1343, 2201, and 2202. Venue is proper in this judicial district pursuant to 28 U.S.C. Sec. 1391, because the acts described herein took place within the Northern District of Illinois.

12. Plaintiffs, Artist M., Sarah B., Claude F., Algienan G., Douglas S., Myron C., Willie M., Brandon W., and Amber B. are minors who are under the care and supervision of DCFS. They are the class representatives of Class A. Douglas S., Myron C., Willie M., Brandon W., and Amber B. also represent Class B.

13. Gordon Johnson ("Johnson"), Director of DCFS, is sued individually and in his official capacity. He is responsible for developing, implementing, and monitoring the programs, policies and practices of DCFS, which is the agency mandated by Illinois law to provide family stabilization, reunification, foster care, adoption, and other services to the plaintiffs and their families. Ill. Rev. Stat. ch. 23, Secs. 5001-5005. Johnson is responsible for ensuring that DCFS' practices and policies comply with the law.

14. Gary T. Morgan ("Morgan"), the Guardianship Administrator of DCFS, is sued in his individual and official capacities. Morgan is the person named temporary custodian or guardian of the person of a child by the Juvenile Court when a child is placed with DCFS. Morgan is responsible for providing adequate services to these children.

CLASS ALLEGATIONS

15. The named plaintiffs bring this action, on their own behalf and on behalf of all others similarly situated, pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The plaintiff Class A includes children (i) who are or will be named respondents in petitions filed in the Juvenile Court alleging that they are abused, neglected, or dependent; (ii) who, in the course of such proceedings, are or will be placed in DCFS' custody or are or will be returned home or placed in private homes under the supervision of DCFS; and (iii) who are now or will be without a caseworker because of the practices complained of herein.

16. Class A is so numerous that joinder of all members is impracticable. There are approximately 1,000 children in the class.

17. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members of the class. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

18. The claims of the named plaintiffs are typical of the claims of the class.

19. The named plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the class and seek relief which will benefit all members of the class. Plaintiffs are represented by the Cook County Public Guardian. The Public Guardian is the court-appointed attorney and Guardian Ad Litem of each of the plaintiffs and, by virtue of an order of the Circuit Court of Cook County, has been or will be appointed attorney and Guardian Ad Litem for each class member. The Public Guardian is experienced in civil rights litigation.

20. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to the individual members of the class.

21. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

22. Plaintiff Class B is a subclass of Class A. It includes children (i) who are or will be named respondents in petitions filed in the Juvenile Court, alleging they are abused, neglected, or dependent; (ii) who, in the course of such proceedings, are or will be placed in DCFS' custody; and (iii) who are now or will be without a caseworker because of the practices complained of herein.

23. Class B is so numerous that joinder of all members is impracticable. There are approximately 300 children in the class.

24. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members of the class. A c'ass action is superior to other available methods for the fair and efficient adjudication of the controversy.

25. The claims of the named plaintiffs are typical of the claims of Class B.

26. The named plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the class and seek relief which will benefit all members of the class. Plaintiffs are represented by the Cook County Public Guardian. The Public Guardian is the court-appointed attorney and Guardian Ad Litem of each of the plaintiffs and, by virtue of an order of the Circuit Court of Cook County, has been or will be appointed attorney and Guardian Ad Litem for each class member. The Public Guardian is experienced in civil rights litigation.

27. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to the individual members of the class.

28. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

STATEMENT OF FACTS

29. The Division of Child Protection ("DCP"), a division of DCFS, investigates complaints of alleged child abuse, neglect, or dependency.

30. If the DCP investigation reveals credible evidence of abuse, neglect, or dependency, the Cook County State's Attorney may file a petition in Juvenile Court.

31. If the Juvenile Court determines that there is probable cause to believe that the minor is abused, neglected, or dependent, it will either (a) place the child in the temporary custody of DCFS; (b) place the child in the temporary custody of another individual, usually a relative, under DCFS supervision; or (c) return the child to her parents or guardians under a protective order and under DCFS supervision. Ill. Rev. Stat. ch. 37, Secs. 802-10, 802-25 (1988).

32. DCP investigators rarely provide any services to children and their families other than the initial emergency placement, if necessary. Instead, DCP transfers the case to one of four DCFS area offices in Cook County for the assignment of a caseworker.

33. In most cases, DCFS does not assign a caseworker to a child's case until at least four to six weeks after Juvenile Court places the child in DCFS' temporary custody or under its supervision. Consequently, the plaintiffs and their families receive no social services during this crucial period.

34. Children in DCFS' custody receive little, if any, assistance from DCFS to help them adjust to the traumatic experiences they undergo. These children, who are

removed from their family homes and placed in shelters, foster homes, group homes, residential facilities, and psychiatric hospitals, usually cannot go to school, see their families, or receive medical care or counseling until a follow-up worker is assigned.

35. These children's families, often equally traumatized, receive little, if any, assistance from DCFS to help them remedy the conditions which led to the removal of their children. Often during this time, parents have no idea where their children are.

36. Children who remain home or are returned home to their families under a protective order receive just as little assistance from DCFS during this "caseworker gap." Since no DCFS caseworker is assigned to the case, no one monitors the condition of the home during this time. Consequently, the protection provided by the order is illusory, and plaintiffs are unnecessarily subjected to the risk of additional abuse or neglect, which may necessitate their removal from the home.

37. Likewise, children who are placed in the custody of a relative or other private individual are without DCFS supervision and services when no caseworker is assigned.

38. Once a caseworker is assigned to a particular case, she does not remain permanently assigned to that case. Caseworkers frequently take leaves of absence, resign, or are reassigned. As a result, few, if any, of the plaintiffs are serviced by the same caseworker from start to finish.

39. If a caseworker takes a leave, resigns or is reassigned, a child does not receive a replacement caseworker immediately. In fact, a child may go months without a caseworker because of DCFS' failure to replace previously assigned caseworkers.

NAMED PLAINTIFFS

40. Artist M. was born on May 11, 1988 with cocaine in his system. On July 7, 1988, the Juvenile Court entered a protective order upon Artist's mother. Artist's case was originally assigned to a DCFS worker from the Harvey office. It was transferred to the South Area Office in September 1988. The case has been unassigned since then. During this time, DCFS has provided no one to monitor Artist's safety or to determine whether necessary services are being provided.

41. In November 1988, DCFS investigated a report that the father of Sarah B., age thirteen, Judith B., age eleven, Avram B., age nine, and Rachael B., age six, had seriously beaten Avram. Sarah told the investigator that their father had hit Avram in the face so hard that he could not go to school the next day. She also told the worker that her father had coached all the children as to what they should say to DCFS. When the DCFS investigator first came to the home, the father denied access. On November 16, 1988, the Juvenile Court entered a protective order on the children's parents. The order prohibits the use of excessive corporal punishment and requires the parents to participate in counseling with the children. No worker has been assigned to the case. DCFS has

provided no one to monitor the home or to identify and obtain appropriate services.

42. Claude F. was born on November 9, 1988 with cocaine in his system. When he was born, he was suffering withdrawal from cocaine. He also tested positive for the HIV antibodies. Claude's mother admitted that during her pregnancy, she had used heroin, marijuana, and cocaine. Claude's condition required that he be on an apnea monitor. On November 18, 1988, the Juvenile Court entered a protective order upon Claude's mother which required that she attend a substance abuse program, that she submit to weekly urine tests, and that she take Claude to all necessary medical appointments. No caseworker has been assigned to Claude's case. DCFS has provided no one to monitor the home or to identify and obtain appropriate services.

43. In October 1988, DCFS investigated a report that Algienan G., age ten, Samuel G., age eight, and Stewart G., age two, had been left with their aunt by their mother without a care plan and that their mother used drugs. The Juvenile Court appointed the children's aunt temporary custodian of the children on October 28, 1988. That aunt's home is not large enough for the three children. Although she requires financial assistance for the care of the children, she has received none. Initially, the children's mother gave their aunt her public aid money. However, after the aunt was appointed custodian, the mother's aid was cut. The children's aunt is struggling to provide for them. No DCFS worker has been assigned to the case. DCFS has provided no one to monitor the home or to identify and obtain appropriate services.

44. Douglas S. was born on December 21, 1984. In September 1988, DCFS investigated a report that Douglas' mother was using tranquilizers, cocaine, and marijuana and that when a fire broke out in her apartment, she slept through the alarm. The investigation also revealed that Douglas had marks on his cheek and buttocks which his mother had inflicted, and that his mother had failed to seek medical attention for his impetigo. The DCFS investigator who took the reports described Douglas' case as a "high risk." The Juvenile Court appointed DCFS temporary custodian of Douglas on September 20, 1988. Douglas' case is not assigned to a caseworker. DCFS has provided no one to monitor the home or to identify and obtain appropriate services.

45. In September 1988, DCFS received a report that Myron C., age eleven, and Keisha C., age one, had been locked in their apartment with no means of escape on the evening of September 16, 1988. That evening the children's mother was arrested for prostitution. The Juvenile Court appointed DCFS temporary custodian of the children on November 9, 1988. DCFS assigned an interim services worker who submitted a social investigation report for the Juvenile Court on October 7, 1988. Since October 7, 1988, no worker has been assigned to the children's case. DCFS has provided no one to monitor the home or to identify and obtain appropriate services.

46. Willie M., age eleven, Latonya M., age eight, Erick M., age six, came to DCFS' attention in September 1988 when their grandmother reported that their mother abused cocaine and that she frequently left the children for days. The Juvenile Court appointed DCFS custodian

of the children on September 6, 1988. The case was initially assigned to an interim services worker. On November 16, 1988, the case was transferred to DCFS' South Area Office. It has been unassigned since then. A representative of DCFS informed the Juvenile Court on December 8, 1988 that the case was lost. Since then, DCFS has provided no one to monitor the children's safety or determine whether necessary services are being provided.

47. Brandon W., age eight, Jariotta M., age five, Parish W., age four, and Eugenia W., age two, are all in DCFS custody as a result of neglect by their mother. DCFS has been involved in the family since 1984 and it has had custody of the older children since 1986. During its involvement with the family, DCFS has assigned various workers to the case, the most recent being Aida Guarderas. According to DCFS' records, Ms. Guarderas remains the caseworker for the children. However, Ms. Guarderas has not been assigned to the DCFS unit handling the family since September 1988. As a result, the dispositional hearing scheduled for September 7, 1988 has had to be continued twice and is now set for February 23, 1989. Since September, DCFS has provided no one to monitor the children's safety or determine whether necessary services are being provided.

48. Amber B., age sixteen months, received severe burns and bruises in her home and was diagnosed as failure to thrive. On October 4, 1988, DCFS took temporary custody. Her three siblings remained in the home with their mother and grandmother under a protective order. An interim service worker was not assigned to the case until November 2, 1988. This worker saw the family

once that week. As of December 14, 1988, no DCFS caseworker was assigned to the case. During that time, DCFS provided no one to monitor the home or to identify and obtain necessary services.

49. The problems presented by the named plaintiffs are typical of the problems faced by the plaintiffs generally as a result of DCFS' failure to promptly assign and replace caseworkers.

50. As a result of the delay in initially assigning and later replacing caseworkers, plaintiffs who are removed from their homes remain in placement longer than necessary and are unable to visit their families, to receive therapy, to attend school on a regular basis, to receive medical treatment, or to receive any other reunification services or services to address their needs.

51. Plaintiffs who are removed from their homes are placed in foster homes and institutions without anyone to monitor their safety, despite the fact that many children in DCFS' custody are abused or neglected while in DCFS' custody.

52. Plaintiffs placed in DCFS' custody lack meaningful case plans and a case review system, which are specifically intended to ensure that they receive appropriate services.

53. As a result of the delay in initially assigning and later replacing caseworkers, DCFS fails to monitor adequately those plaintiffs who are returned home under DCFS supervision. Consequently, these children are without services necessary to address their needs and the needs of their families and are unnecessarily at risk of

additional incidents of abuse or neglect, which may necessitate their removal from the home.

OTHER ALLEGATIONS

54. Keyandra H. was born on October 10, 1988 with cocaine in her system. On November 9, 1988, the Juvenile Court entered a protective order on Keyandra's mother requiring that she refrain from using illegal drugs and that she attend drug counseling. As of December 5, 1988, Keyandra's case has not been assigned to a worker. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

55. Jessica S. was born on April 8, 1980. In October 1988, DCFS investigated a report that Jessica's mother had inflicted excessive corporal punishment upon her. At the time DCFS investigated, Jessica's buttocks was bruised. Jessica stated that her mother had caused the bruises and that at times her mother had inflicted extreme bruises. This report was the fifth time that DCFS had investigated Jessica's mother for child abuse. The Juvenile Court entered a protective order upon Jessica's mother requiring her to attend counseling and to refrain from using corporal punishment on Jessica. No case-worker has been assigned to Jessica's case. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

56. In November 1988, DCFS investigated a report that Walter L., age twelve, Marquess L., age four, and Tyrice L. and Parice L., both age two, had been left alone by their mother, whose whereabouts were unknown. On November 22, 1988, the Juvenile Court appointed DCFS

temporary custodian of the children. The children were placed in a foster home. Walter has been out of school for at least two weeks. Walter wants to live with his grandmother. Although his grandmother may be an appropriate foster parent for the children, the move could not be facilitated until a caseworker had been assigned. A caseworker was not assigned until December 14, 1988. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

57. In September 1988, DCFS investigated a report that Stacy A., age sixteen, and Willie A., age seventeen, were dependent due to their father's disability. Their mother had died, and their father had pancreatic disease and could not care for the children. The Juvenile Court appointed DCFS custodian of the children. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

58. Jonathon H. was born on March 19, 1984. In November 1988, DCFS received a report that his mother had left him with a friend without a care plan. On November 9, 1988, the Juvenile Court placed Jonathon in his father's custody under a protective order. No caseworker has been assigned to Jonathon's case. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

59. Ginger B. was born on July 3, 1988. In November 1988, DCFS investigated a report that Ginger's mother had left her alone in the home and that she had fallen from a chair to the floor. On November 4, 1988, the Juvenile Court appointed DCFS custodian of Ginger. On November 14, 1988, the Juvenile Court returned custody

of Ginger to her mother under a protective order. No caseworker has been assigned to Ginger's case. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

60. Dameon L. was born on October 4, 1988 with cocaine in his urine. On November 9, 1988, the Juvenile Court entered a protective order on Dameon's mother requiring her to undergo a drug evaluation and to maintain a permanent suitable residence. No caseworker has been assigned to Dameon's case. DCFS had provided no one to monitor the home or to identify and obtain appropriate services.

61. Robert D. was born on November 15, 1988. He was found in a senior citizen's home two or three hours after his birth. On November 16, 1988, the Juvenile Court appointed DCFS temporary custodian of Robert. No worker has been assigned to Robert's case. DCFS had provided no one to monitor him in his placement or to identify and obtain appropriate services.

62. Denise V. was born on December 17, 1981. In August 1988, Denise was discovered to be severely malnourished. At that time, she had been out of school for forty-nine consecutive days. On August 18, 1988, the Juvenile Court entered a protective order on Denise's mother. The order required, among other things, that Denise's mother provide Denise with adequate food. No worker was assigned to Denise's case until November 29, 1988 – over three months after the protective order had been entered, and less than three months before the protective order was to expire. DCFS had provided no one to

monitor the home or to identify and obtain necessary services.

63. Crystal B. and her sisters Holly D. and Melita D. lived with their father in June 1988. Their father had a drinking problem. He spent money that was for the children's food, and the children were often left hungry. At that time Crystal, who was then sixteen years old, was pregnant. In June 1988, the Juvenile Court entered a protective order on the girls' father. From June until October 1988, no caseworker was assigned to their case. DCFS had provided no one to monitor the home or to identify and obtain necessary services.

64. On October 21, 1988, the Juvenile Court appointed DCFS guardian of Johnnel S., who is six years old. DCFS placed Johnnel with Bea Ella Hall, a foster mother. Johnnel's case was not assigned to a worker until November 28, 1988. In the meantime, Johnnel was not enrolled in school, and he received no visits with family members. Ms. Hall had no idea why Johnnel was placed with her or what services he required. DCFS had provided no one to monitor the home or to identify and obtain necessary services.

65. Tyronda P., age seven, Ebony P., age five, and LaShawndra P., age one, came to the attention of DCFS in August 1988 when a young man living in their home murdered their three year old sister, Ryan. On August 5, 1988, the Juvenile Court imposed a six month protective order upon their mother which required that she allow no contact between the children and the murderer and that she and the children participate in counseling. The children's case was unassigned until at least December 9,

1988. DCFS had provided no one to monitor the home or to identify and obtain necessary services.

66. Eric H. was born on November 6, 1988 with cocaine in his system. On February 11, 1988, the Juvenile Court imposed a protective order upon his mother which required his mother to take him to necessary medical appointments and to participate in drug screening and treatment. From at least as early as August 30, 1988 until at least November 14, 1988, the case was not reassigned while Eric's worker was on medical leave. Throughout that time, DCFS provided no one to monitor the home or the services provided to Eric's family.

67. Erick B. was born on April 23, 1986. In February 1988, DCFS investigated a report that Erick's mother was unable to care for him because of emotional problems. The Juvenile Court entered a nine month protective order on Erick's father on February 29, 1988. The order prohibited Erick's father from allowing Erick to see his mother without DCFS supervision and required Erick's father to attend parenting classes and refrain from using excessive corporal punishment. Erick's case was originally assigned to DCFS caseworker Tom Stabnicki. Mr. Stabnicki was on leave from DCFS from July 1988 until early December 1988. Throughout his absence, Erick's case was unassigned, and DCFS provided no one to monitor the home or to identify and obtain necessary services. On December 9, 1988, before Mr. Stabnicki had returned from leave and over the objection of the Public Guardian, the Juvenile Court vacated the protective order because it had expired and dismissed the case.

68. In December 1987, DCFS investigated a report that Jennifer F., age ten, and Michele D., age eight, had been sexually abused by Michele's father, who is Jennifer's stepfather. On December 29, 1987, the Juvenile Court appointed DCFS custodian of Jennifer, Michele, and their sister, Kimberly, age five. Their case was not assigned to a DCFS caseworker for over a month. During that time, DCFS provided no one to monitor the home or to obtain necessary services.

69. In June 1988, DCFS investigated a report that Katherine H., age eight, and William H., age eleven, had been subjected to sexual abuse by their father. On June 14, 1988, Juvenile Court appointed DCFS custodian of the two children. No DCFS caseworker was assigned to the case until August 1988. William's glasses were lost when he first came into custody. Both children required counseling. However, until a caseworker was assigned, William had no glasses and neither child received any counseling.

70. Harvey G. was born on July 29, 1988 addicted to cocaine and PCP. DCFS took temporary custody of Harvey on October 4, 1988 and placed him with his maternal grandmother. Harvey is on a monitor and has vision and hearing problems. The case was originally assigned to DCP worker Marilyn Pedro and remains officially assigned to Pedro as of December 12, 1988. DCFS states, however, that Ms. Pedro left employment there in August, 1988. During that time, DCFS provided no one to monitor the home or to obtain necessary services.

COUNT I

71. Plaintiffs in Class A incorporate and reallege paragraphs 1 through 70.

72. Defendants have violated the rights of the members of Class A under the Adoption Assistance Act in that defendants, as a result of their policy and practice of not assigning and replacing caseworkers promptly, have failed to make reasonable efforts (a) to prevent or eliminate the need for removing the plaintiffs from their homes, and (b) to facilitate reunification of the plaintiffs with their families when removal is initially required.

COUNT II

73. Plaintiffs incorporate and reallege paragraphs 1 through 70.

74. Defendants have violated the rights of the members of Class B under the Adoption Assistance Act in that defendants, as a result of their policy and practice of not assigning and replacing caseworkers promptly, have failed:

(a) to ensure that DCFS inform the Juvenile Court or the appropriate law enforcement agency of any abuse, neglect, or exploitation of the plaintiffs while in DCFS-subsidized placement;

(b) to develop and implement a meaningful case plan for each of the plaintiffs; and

(c) to develop and implement a meaningful case review system with respect to the plaintiffs.

COUNT III

75. Plaintiffs in Class B incorporate and reallege paragraphs 1 through 70.

76. Defendants have violated the rights of the members of Class B under the Due Process Clause of the United States Constitution in that defendants, as a result of their policy and practice of not assigning and replacing caseworkers promptly have denied plaintiffs in Class B adequate treatment in custody.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, individually and on behalf of all other similarly situated individuals, pray that this court enter an order:

1. Declaring that defendants' policies and practices complained of herein violate the plaintiffs' rights under the Adoption Assistance Act and the Fourteenth Amendment of the United States Constitution;

2. Requiring defendants to develop a plan to ensure that DCFS assigns a caseworker capable of delivering family preservation, family reunification, placement, visitation, medical, counseling, educational, and other services to each of the plaintiffs and their families no later than twenty-four hours after the Juvenile Court places them in the temporary custody of DCFS or a private individual or returns them home under DCFS' supervision;

3. Requiring defendants to develop and implement a plan that will ensure that DCFS will provide such a

caseworker at all times to each of the plaintiffs and their families while their cases are pending in Juvenile Court;

4. Requiring defendants to notify the Office of the Public Guardian of the name of every plaintiff for whom no caseworker is assigned for a period of greater than twenty-four hours;

5. Awarding plaintiffs the reasonable costs and expenses incurred in the prosecution of this action, including, but not limited to attorneys' fees pursuant to 42 U.S.C. Sec. 1988; and

6. Granting such other or further relief as the Court deems just and proper.

Respectfully Submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ARTIST M., *et al.*, Plaintiffs,	)	No. 88 C 10503
v.	)	
GORDON JOHNSON, *et al.*, Defendants.	)	Judge Shadur

On June 21, 1990 the Court of Appeals entered an order partially remanding this case to this Court for the entry of factual findings as to the current delays in case-worker assignment and reassignment (the "June 21 Order"). This Court promptly set a status hearing to schedule the proceedings necessary for that purpose. Because of certain questions identified by this Court in that status hearing, defendants (for convenience hereafter referred to collectively as "DCFS") returned to the Court of Appeals, and the June 21 Order was modified on June 27, 1990 by the "June 27 Order."[1] This Court then set for July 18 both (a) an evidentiary hearing and (b) the contemporaneous advance submission by the parties of proposed findings of fact and conclusions of law – that was the earliest date that the parties could do so, given the preparation that they required for those purposes.

In part this Court directed the parties to include in their evidentiary submissions the information that would facilitate this Court's recapitulation of the situation as of

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[1] Copies of the June 21 Order and June 27 Order are attached as Exhibits 1 and 2 to this memorandum opinion.

the March 2, 1990 date of entry of the preliminary injunction order now on appeal, and that would do so in the context of the record that had been before this Court reflecting the earlier situation at DCFS.[2] That would effectively enable this Court to provide the Court of Appeals with a brief motion picture rather than simply a still photograph, inasmuch as DCFS' perceived lack of progress under its own Reorganization Plan despite the passage of many months was the key motivating factor in this Court's decision to enter the March 2 injunction order.

Shortly before the scheduled July 18 hearing date the parties advised this Court that they had been able to reach stipulations as to a number of the facts that would obviate the need for a testimonial hearing, so that they would meet the July 18 date established by this Court with paper submissions rather than testimony. Both did so at the end of the July 18 working day.[3]

On July 20 DCFS moved to strike virtually all of plaintiffs' submission, setting that motion for hearing on July 24.[4] To the extent that DCFS' motion related to the

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[2] That requested presentation was viewed as helpful in directing this Court's attention to the specific record references to the before-and-after situations.

[3] Their Stipulations (cited here as "Stip. ¶ – ") are attached as Exhibit 3 to this memorandum opinion.

[4] That four-day gap (weekend included) conformed to this District Court's General Rule 12(e), which specifies two working days' prior notice by personal delivery of any motions to be presented in court. However, this Court frequently deals with matters on a more expedited basis where there is an

(Continued on following page)

proposed findings of fact ("Findings") tendered by plaintiffs, that criticism was indeed ironic: It essentially sought to object because plaintiffs' submission did deal, in an effective and informative way, with the background that was known to this Court when it rejected DCFS' purported implementation of its Reorganization Plan as having failed to deliver the results that it was supposed to accomplish, and thus as a failure to comply with the statutory "reasonable efforts" standard. And although DCFS' motion proposed to criticize plaintiffs as thus seeking to buttress their case before the Court of Appeals, in a number of vital areas DCFS' own Proposed Findings of Fact did exactly what DCFS' counsel were urging was improper on plaintiffs' part – for DCFS' submission also sought to argue its own case as a matter of advocacy.[5]

(Continued from previous page)

emergency or where timing is otherwise critical, and where the opponent does not urge any prejudice by reason of the accelerated schedule. It would seem that type of accelerated treatment should have been sought here, given the Court of Appeals' specified July 26 deadline.

[5] For example, DCFS Proposed Finding 3 unconvincingly sought to reduce the *stipulated* 19-day average delay in cases transferred from Interim Services Teams ("ISTs") to DCFS area offices at the end of the 30 to 45-day period of initial services provided by the IST (Stip. ¶¶19, 3). DCFS would have this Court find that the 19-day delay somehow becomes a 5-day delay merely because the transferor IST technically (that is, on paper) retains responsibility for a case for 14 days after the file is transferred. From the prior hearings conducted by this Court and from other evidentiary submissions, such theoretical wholly-on-paper responsibilities do not at all serve the goal of actual caseworker assignments to people who are physically able to perform the various caseworker responsibilities. This Court has therefore rejected DCFS' position as at war with the facts.

Accordingly DCFS' motion to strike much of plaintiffs' submission has been denied. This Court does agree that no Conclusions of Law of the type suggested by plaintiffs are called for – those were expressly included in this Court's preliminary injunction order – and so plaintiffs' recommended legal conclusions have not been taken into account here.

One last point should be addressed before turning to the Findings themselves. This Court has of course not gone forward with any proceedings in this action during the pendency before the Court of Appeals of the interlocutory appeal from the March 2 preliminary injunction – but that does not relieve this Court of its responsibility to be alert to developments potentially affecting the case. Thus this Court had also been fully aware of, and had been monitoring, the pendency of *Wilder v. Virginia Hospital Association*, 110 S.Ct. 2510, 2517-23 (1990).[6] It accordingly reviewed the *Wilder* decision as soon as it was handed down.

If this Court had viewed that decision as in any respect destroying the underpinnings of this Court's determination of plaintiffs' reasonable likelihood of success on the merits in *this* case – that is, as negating the existence of plaintiffs' private cause of action here – it

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[6] That awareness of *Wilder* was not primarily stimulated by this case. As it happened, this Court had late last year, based on the Supreme Court's having accepted review in *Wilder*, deferred ruling on a motion in an entirely different case on its calendar – one that posed the identical substantive question of an enforceable private cause of action under the specific statute involved in *Wilder* (the Boren Amendment to the Medicaid Act).

would have considered that its judicial responsibility called for requesting a remand from the Court of Appeals to enable this Court to vacate the preliminary injunction because of that supervening development of law.[7] Potential mootness would always seem an appropriate consideration under such circumstances.

Accordingly this Court has indeed considered the effect of *Wilder* on its preliminary injunction decision here. It has determined that the Supreme Court's upholding of the Boren Amendment's "reasonable rates" standard as giving rise to private enforceable rights

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[7] Indeed that is essentially what this Court did in *United States v. Williams*, 877 F.2d 516 (7th Cir. 1989). There this Court had, during the course of the criminal trial, rejected the proposed entrapment defense of codefendant Tedric Beverly ("Beverly") based on the then-established principles consistently announced by our Court of Appeals' decisions. After Beverly had been convicted by the jury and sentenced by this Court and had then taken an appeal, the United States Supreme Court reversed our Court of Appeals in *United States v. Mathews*, 108 S.Ct. 883 (1988), which involved the same entrapment question. This Court therefore requested the Court of Appeals to remand the case to permit this Court to determine whether adherence to the supervening Supreme Court decision in *Mathews* would have required it to submit defendant's entrapment defense to the jury (as this Court had refused to do at trial) – see this Court's opinion in *United States v. Beverly*, 699 F. Supp. 1256, 1258 (N.D. Ill. 1988). Such a limited remand was ordered by the Court of Appeals, this Court made the necessary determination and returned the case to the Court of Appeals, and the conviction was then affirmed at 877 F.2d 516.

under Section 1983[8] strongly reinforces, rather than casting into any doubt, this Court's decision as to the "reasonable efforts" standard under the statute at issue here (and see the opinion to the same effect by this Court's colleague Honorable William Hart in *Norman v. Johnson*, 1990 U.S. Dist. LEXIS 6181, at 7-12 (N.D. Ill.), issued after this Court's opinion here and before the Supreme Court's decision in *Wilder*). This Court will therefore not request any further remand to enable it to consider vacating the preliminary injunction order now on appeal.

This opinion now turns to the Findings. As was true during the proceedings that took place before the entry of the March 2 preliminary injunction, this Court has found DCFS' position largely unpersuasive and that presented by plaintiffs largely persuasive. These Findings therefore draw largely on plaintiffs' submissions.

Findings of Fact

Initiation of Juvenile Court Cases

1. As to each member of the plaintiff classes, DCFS has filed or will file a petition for adjudication of wardship ("petition") in the Circuit Court of Cook County, Juvenile Division ("Juvenile Court"), alleging that the

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[8] In addition to its rejection of the argument that "the obligation imposed by the [Boren] Amendment is too 'vague and amorphous' to be judicially enforceable" (*Wilder*, 110 S.Ct. at 2522), the Supreme Court characterized as an "objective benchmark" a standard that called on a court to review whether the State had "ensur[ed] 'reasonable access' to eligible participants" (*id.* at 2523).

child is abused, neglected or dependent. 1-17-89 Tr. 26, 274.

2. DCFS' filing of a petition is based upon an investigation conducted by its Office of Child Protection ("DCP"), one of whose investigators is assigned to each case. 1-17-89 Tr. 225, 275, 276. Such investigators do not themselves provide or arrange for any services for children or their families. P. Ex. 29: Denton Dep. 9-10.

3. When DCFS files the petition, it requests an award of temporary custody or the entry of a protective order. If it seeks the former, the temporary custody hearing usually occurs on the same day the petition is filed; but if DCFS recommends a protective order, the first court date is usually scheduled at some future date (at varying intervals) after DCFS files the petition. P. Ex. 29: Benson Dep. 19. Even where DCFS may seek temporary custody of the child, the child and the parents have a right to contest that request. Thus some of those cases, as well as those in which DCFS recommends a protective order, result in the Juvenile Court's referring the child to his or her parents' custody under a protective order. 1-17-89 Tr. 27-28. Conversely, when the Juvenile Court awards temporary custody, it appoints Gary T. Morgan or another person as custodian of the child.

Vital Role of the Caseworker[9]

4. When temporary custody is taken, a DCFS caseworker must be assigned in order to maintain the child's family ties, work toward reunification and ensure the child's well-being. To those ends the caseworker must search for relatives qualified to care for the child or locate a suitable placement; arrange appropriate counseling; complete school transfers where appropriate so the child's education is not interrupted; arrange family visitation; provide appropriate medical care; and generally assure the child's safety. 1-17-89 Tr. 247-58; P. Ex. 29: Mayberry-Dunn Dep. 15-16, Williams Dep. 22-27. In temporary custody cases the caseworker is also responsible for developing a written, individualized case plan and advising the Juvenile Court of the condition of the child and the family. 1-17-89 Tr. 31; 1-19-89 Tr. 786; P. Ex. 29: Mayberry-Dunn Dep. 15-16, Williams Dep. 22-27.

5. If no caseworker is assigned to the case, the child is usually dropped off at a placement without any information about his or her case, such as the nature of the abuse or neglect and the names of family members. Without that critical information, neither reunification services

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[9] DCFS' proposed Findings seek to denigrate the importance of caseworkers as mere "case managers, who arrange for the provision of services by others." But that is both (1) a mistaken emphasis on the mechanics rather than the human values involved in the relationship and (2) all of a piece with DCFS' consistent substitution of a theoretical paper structure of "responsibility" for the existence of a live person with actual hands-on responsibility for assuring that the needed services are in fact provided (see n.5, Finding 19 & n.10 and Finding 22.)

such as visitation nor other vital child welfare services can begin. 1-17-89 Tr. 82; 1-18-89 Tr. 351-56.

6. In protective order cases the caseworker must secure services to preserve the family: individual or family counseling to ease or eliminate the crisis that led to the child's mistreatment; homemaker and housekeeping services so that the conditions of the home will not require the child's removal; substance abuse programs to enable parents to attend to their children's needs; help in obtaining food, shelter and medical care; and monitoring of the child's safety at home. 1-17-89 Tr. 168, 183; P. Ex. 29: Mayberry-Dunn Dep. 15-16.

7. DCFS may also contract with a private agency to provide child welfare services in both protective order and custody cases. Significantly, DCFS' own standards confirm the importance of personal contact by the assigned worker – it requires a private agency to see the child within 24 hours of receipt of the case. Plaintiffs' January 19, 1990 Response to Defendants' Report to the Court ("P. Resp.") Ex. 1, Int. 5(h).

8. When a case is transferred to a private agency, DCFS and the private agency share the responsibility for delivering services, so that the private agency delivers services directly while DCFS has a supervisory and monitoring role. 1-19-89 Tr. 699; P. Ex. 29: Mayberry-Dunn Dep. 39. DCFS caseworkers are jointly responsible with the private agency for preparing a case plan and providing an administrative case review, and they retain ultimate responsibility for all facets of the case. P. Ex. 29:

Williams Dep. 26. DCFS' caseworker also remains responsible for ascertaining whether there are appropriate relatives with whom to place a child. 1-17-89 Tr. 84. Certain services (such as psychiatric hospitalization for a suicidal child) may not be provided by a private agency, and the DCFS caseworker remains primarily responsible for obtaining or providing the consent for such services. 1-18-89 Tr. 359. DCFS' caseworker may also be required to authorize familial visits. 1-18-89 Tr. 363, 365. DCFS' caseworker is also responsible for planning for long-term care of children in short-term private agency placements, a responsibility that includes authorizing a psychological evaluation, which is essential to the long-term placement of an adolescent. 1-18-89 Tr. 353.

9. Unless and until DCFS has assigned a caseworker, no services can be or are in fact provided to plaintiffs or their families. P. Ex. 29: Mayberry-Dunn Dep. 35, Denton Dep. 29. For example, a young child in DCFS' custody may be denied visits with her parents or siblings for several weeks (1-17-89 Tr. 89; 1-18-89 Tr. 342, 355-56, 363-65); be left in an inappropriate placement such as a shelter, even when appropriate relatives are interested in caring for her (1-17-89 Tr. 84-85); be denied sex abuse treatment, grief counseling or psychiatric care (1-17-89 Tr. 100, 111; 1-18-89 Tr. 359); be unable to attend school (1-18-89 Tr. 341-42); or be in DCFS custody without any case plan (Benson Exs. 1 and 5) – all while awaiting the assignment of a caseworker.

10. DCFS' failure to provide caseworker-initiated services at early stages of its custody of plaintiffs is particularly harmful. 1-18-89 Tr. 367, 499-500; 1-19-89 Tr. 636; P. Resp. Ex. 2. Because family members are the most

motivated during a time of crisis, immediate intervention is essential. 1-18-89 Tr. 389. Relatedly, the likelihood that children whom DCFS separates from their families will return home is directly related to the speed with which they receive reunification services. 1-18-89 Tr. 500; P. Resp. Ex. 3. Thus the greater the delay in providing such services during this critical period, the more likely it is that the child will never return home, and the goal of family reunification becomes more remote and less attainable. 1-17-89 Tr. 227; 1-18-89 Tr. 365, 367; 1-19-89 Tr. 629.

11. Children who reside at home under DCFS' supervision are also denied family preservation services and protection when no caseworker is assigned. 1-17-89 Tr. 183. For example, without a caseworker a child who had come under DCFS' supervision because her parent failed to provide adequate food went hungry again and had to leave her mother's home (1-17-89 Tr. 129-31); a parent who had been ordered to obtain drug treatment by the Juvenile Court and was willing to do so in order for her children to remain with her had no assistance from a caseworker in locating and enrolling in a drug treatment program (1-18-89 Tr. 402-06); and a child who was without an assigned caseworker to make home visits was further abused by his father and had to be removed from his father's custody (1-17-89 Tr. 131-38).

12. When children remain at home, DCFS' failure to provide family preservation services quickly places them at risk and often results in their removal from home. 1-17-89 Tr. 129-37; 1-18-89 Tr. 512; 1-19-89 Tr. 629; P. Ex. 29: Johnson Dep. 29-30. Defendant Gordon Johnson

testified (1-19-89 Tr. 630):

> [W]e didn't have a strong preventive effort at the front end of the system to try to keep children, as much as possible, at home with all the possibility of good services.

Without such an effort, the child's situation often deteriorates and DCFS must remove the child from her home. 1-17-89 Tr. 133-38; 1-18-89 Tr. 447, 512.

DCFS' Caseworker Assignment Practices at the Time of the Hearing

13. As of December 31, 1988 DCFS regularly delayed the assignment of cases to caseworkers capable of initiating child welfare services to the plaintiffs and their families, both in protective order and in temporary custody cases. In most cases DCFS did not assign a caseworker until at least two weeks after the first Juvenile Court date. In a large number of cases the delays lasted 30-45 days after plaintiffs' cases were initiated in Juvenile Court, with some delays in excess of 45 days. Stip. ¶1.

14. Delays described in Finding 13 occurred in cases sent from DCP to one of the ISTs. ISTs handled new temporary custody cases except sex-abuse cases. Other court cases – protective order and sex-abuse cases – were sent from DCP directly to one of DCFS' area offices. There were similar 30-45 day delays in those cases. Stip. ¶2.

15. In a large number of cases, even after caseworkers were assigned children lost the benefit of the assignment when their cases later became unassigned. That happened at various stages in a variety of ways. In

cases initially sent to an IST, the caseworkers were assigned for only 30-45 days. Stip. ¶3. After the IST completed its tasks, each of its cases would be transferred to one of DCFS' four area offices. *Id.* There children were again often left for significant periods of time without a caseworker, and thus without family reunification and other child welfare services. 1-17-89 Tr. 33, 188; 1-19-89 Tr. 605-06, 680-81.

16. Similar gaps occurred when DCFS failed to reassign cases after caseworkers in DCFS' four area offices resigned, were terminated, transferred or took leaves of absence. 1-17-89 Tr. 32-33; 1-19-89 Tr. 685-89, 745; P. Exs. 23-25. Those gaps arose regularly as well, for DCFS caseworkers frequently transfer, take leaves of absence, are terminated or resign. Stip. ¶4. Children whose cases were previously assigned to those caseworkers generally went without a caseworker for 30 days after those absences began. Stip. ¶6. Moreover, some children's cases remained assigned to workers who had left DCFS months earlier. P. Ex. 23, 25.

17. Unassigned cases generally were a significant problem as of January 1989. At the end of September 1988 DCFS records reflected that there were over 200 cases in Cook County that had been unassigned for over 30 days. P. Group Ex. 28-0 at 2. At the end of November 1988 DCFS records showed that 320 cases in Cook County had been unassigned for over 30 days, that 83% of those had been unassigned for over 60 days and that 63 cases had been assigned for over 100 days. P. Group Ex. 28-R; P. Ex. 26. In November 1988 Mark Moses, the DCFS employee responsible for monitoring the unassigned caseworker problem, actually wrote, "[T]here are good reasons to

have those cases unassigned." Plaintiffs' Group Ex. 28-O. On December 13, 1988 the head of DCFS' Cook County operations wrote that unassigned cases in Cook County were on the rise. P. Group Ex. 28-P.

18. DCFS did nothing to expedite the assignment of caseworkers capable of delivering family preservation, family reunification and other services to children and their families. Delays described in the prior Findings were a direct result of DCFS' failure to require its personnel to assign cases promptly. P. Ex. 29: Benson Dep. 30-31. DCFS had no mechanism that systemically assured prompt caseworker assignment. 1-17-89 Tr. 241-42. For example, DCFS did not limit the time within which a supervisor assured prompt caseworker assignment. 1-17-89 Tr. 241-42. For example, DCFS did not limit the time within which a supervisor must assign a case. P. Ex. 29: Benson Dep. 30-31.

19. DCFS also failed to develop a policy or procedure for reassigning cases of caseworkers who are absent, irrespective of the reason, for substantial periods of time. 1-19-89 Tr. 685-89, 745; P. Group Ex. 28-H, J, N, O, R. In fact DCFS' witnesses testified that there was a "management decision" not to reassign cases of workers on leave and that DCFS had no procedure whatever regarding cases of workers on leave for a period up to five weeks. 1-19-89 Tr. 745; and see Stip. ¶¶5, 6. Often DCFS made paper assignments by assigning a caseworker in name only. 1-17-89 Tr. 190. Such paper assignments left the child without services, for in reality the child lacked a

caseworker.[10] 1-19-89 Tr. 688; 1-17-89 Tr. 110-11; Benson Ex. 5.

DCFS' Caseworker Assignment Practices: 1989-90

20. By July 1989 DCFS had implemented three of the four elements of its plan to remedy the caseworker assignment process:

(a) the Early Response Package, reducing the paperwork necessary to transfer a case from DCP investigators to the IST and follow-up caseworker teams (1-19-89 Tr. 606);

(b) the expansion of the IST program, designed to allow DCFS to assign all new custody cases to an IST before transferring them to an area office; and

(c) the Family First Initiative ("Family First"), designed to provide intensive services to children remaining at home with their parents.

D. Supp. Submission (August 4, 1989) at 29-32; Stip. ¶¶8, 9, 11 and 12. On July 16, 1989 the final element of DCFS' plans, the division of DCP into the same geographic areas as the area offices, was completed. Stip. ¶4.

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[10] At the risk of belaboring the point, this past pattern of behavior on DCFS' part ties directly into the lack of credibility of DCFS' argument referred to in n.5. It also reinforces the appropriateness of this Court's looking at DCFS' past performance (or more accurately its lack of performance) when this Court evaluated the situation at the time it entered the March 2 preliminary injunction order.

21. Despite the changes, significant delays persisted in assigning caseworkers at the outset of cases. For children whose cases were initiated in Juvenile Court in July 1989, DCFS took an average of 9.3 days between the initial court appearance and the assignment of an IST caseworker and 19.1 days between the transfer from the IST to the assignment of a follow-up caseworker. P. Resp. at 3.

22. IST caseworkers retain full responsibility for a case for 30 to 45 days. Stip. ¶3. After that initial period DCFS can extend the assignment of an IST caseworker for an additional two weeks, but during the extension the caseworker's role is limited to court appearances and to arranging placement changes. P. Resp. Ex. 1, Int. 3(k). IST does not retain responsibility for the remaining caseworker functions such as monitoring a child's safety or arranging parent-child visits.[11] Moreover, the practice of extending IST responsibility is not always followed. P. Supp. Submission (February 12, 1990) at 12 n.9.

23. As a result of DCFS' policies and practices, children whose cases were initially served by an IST were without a caseworker capable of delivering the full array of reunification and other child welfare services for an average of one month within the first two to three months. P. Resp. at 3. Those caseworker gaps occurred at a time crucial to the reunification of plaintiffs with their families. Id. Exs. 2, 3.

24. Neither the IST nor the Family First program functioned as planned. In July 1989 approximately one-

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[11] See n.5.

third of new custody cases went directly from DCP to area offices without IST intervention. P. Resp. at 6. In those cases DCFS failed to assign a caseworker until, on average, 10 days after the first Juvenile Court date. Id. at 6-7. As for Family First, children whose cases were initially assigned to that program experienced significant delays after the expiration of the two to three months during which Family First served the family before assignment of a caseworker at the area offices. 1-19-89 Tr. 602; P. Resp. Ex. 9.

25. DCFS' claims that 77% of July 1989 cases were assigned from DCP to IST in under 5 days were based on a log that IST maintained for new cases. P. Resp. Ex. 1, Int. 2(b). But that log did not include the date on which cases were really assigned *at* IST. Id. Ex. 4: Benson Dep. 28-29; Stip. ¶17. Instead the information contained in the log and the basis for DCFS' representations was merely the date that the early response package "was received at IST." Defendants' January 31, 1990 Reply to Plaintiffs' Response to Defendants' Reports to the Court ("D. Reply") at 14. DCFS had no record of when the cases were actually assigned to an IST caseworker capable of providing child welfare services to plaintiffs and their families. P. Resp. Ex. 4: Benson Dep. 17-18, 28-29.

26. DCFS' changes did not address the gaps created when caseworkers resigned, transferred, were fired or took a leave of absence. Stip. ¶25. Given the number of and frequency of transfers and the high turnover rate of DCFS caseworkers, DCFS' failure to attempt to deal with that problem was especially dangerous. Goad Ex. 9 at 1, 3; P. Group Ex. 28-O at 1; P. Ex. 29: Denton Dep. 22. If a

caseworker were absent for less than 30 days, the supervisor merely monitored the case without handling the everyday service needs of the family. D. Supp. Submission (August 4, 1989) at 36. When absences extended beyond 30 days, DCFS' policy and practice continued to permit supervisors to leave cases previously assigned to the absent caseworker unassigned for 30 or more days. Stip. ¶¶4-6, 25.

27. Cases that *were* reassigned during a caseworker's absence were reassigned en masse to a single caseworker, who by the nature and volume of the reassignments was not and could not be expected to provide services. P. Resp. Exs. 10, 11.

28. Even after implementation of DCFS' plans, its procedures failed to fix responsibility for assigning a caseworker promptly. DCFS assigned Mark Moses to monitor unassigned cases but did not require him to take action when he observed the existence of unassigned cases. P. Resp. Ex. 6, Moses Dep. Gloria Lewis, DCFS' Associate Deputy Director for Cook County Operations who supervises the administrators of the four area offices, received monthly reports listing unassigned cases. P. Resp. Ex. 7, Lewis Dep. Nonetheless, she played no role and had no responsibility in ensuring the assignment of those cases. *Id.* at 15, 47-49.

29. John Goad and Chris Benson, to whom DCFS entrusted the responsibility of closely monitoring compliance with the Early Response Package, reviewed DCFS' performance on only two occasions in all of 1989. John Goad Affidavit (January 31, 1990) ("Goad Aff.") at 3-4, attached to Defendants' Reply of the same date. DCFS

instead simply relied on its expectations (really its wishful thinking) that cases would be assigned. Defendants' Reply at 4, 14.

30. DCFS finally revised the IST logs in December 1989 to record the date on which a caseworker was actually assigned. Affidavit of Chris Benson (January 31, 1990) ("Benson Aff.") at 9, attached to Defendants' Reply; Stip. ¶18. DCFS then submitted December logs for one IST team to this Court. Benson Aff. Ex. F. Of the 20 cases that DCFS selected for the Court's review, only 9 were assigned in 5 days or less. *Id.* All the remaining cases were assigned only after significant delays, with several of them assigned 10 days or more after the first Juvenile Court date. *Id.*

31. On December 7, 1989 Goad wrote in an internal memorandum that the percentage of cases not routed to IST within 5 days had *increased* since July 1989, a trend he described as "disappoint[ing]." Goad Aff. Ex. B.

32. IST logs from January and February 1990 also demonstrated continuing delays in IST caseworker assignment. In January and February 1990 DCFS sent approximately 150 cases to IST for assignment of a caseworker. Stip. ¶21. In several cases IST logs did not contain adequate information to determine the date on which a caseworker was assigned. *Id.*

33. DCFS did not assign a caseworker within 5 days of the first Juvenile Court date in 56 of the remaining 146 cases sent to IST in January and February 1990. *Id.* DCFS thereby fell significantly short of the goal that it had established for itself: assignment of a caseworker within

three to five days. 1-17-89 Tr. 227, 149; Defendants' Proposed Findings of Facts and Conclusions of Law (January 30, 1989) at 44; Defendants' Supplemental Reply Regarding Defendants' Reports to the Court and in Opposition to Plaintiffs' Motion for Preliminary Injunction (February 12, 1990) at 3.

34. In February 1990 alone DCFS did not assign a caseworker within 5 days of the first court date in 40% of the cases sent to IST (33 of 82) and within 10 days of the first court date in 22% of those cases (20 of 82). Of the February 1990 IST cases, 12% (11 of 82) were left unassigned for more than three weeks. Excluding cases that had been screened in advance, DCFS failed to assign a caseworker within 5 days of the first court date in 60% of the February cases.[12]

35. DCFS also continued to leave cases unassigned, on the average, for nearly three weeks after IST completed its tasks. Stip. ¶24. DCFS also failed to modify its policy or its practices against the reassignment of cases in the area offices. Stip. ¶25. As a result, DCFS left cases previously assigned to absent caseworkers unassigned for an average of 30 days. *Id.*

36. System-wide caseworker assignment problems grew as well. Thus the total number of unassigned cases grew from 232 on June 30, 1989 to 404 by the end of 1989, paralleling the pattern of the previous year. P. Resp. Ex.

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[12] By agreement of the parties in open court on July 24, DCFS' February 1990 logs have been made Exhibit A to the Stipulations and are accordingly attached as part of Exhibit 3 to this opinion.

13. And the number of cases unassigned for over 30 days doubled over the same period of time. *Id.*

37. For an extended time period of many months during the pendency of this case, this Court had left DCFS wholly unconstrained by any order setting time requirements for caseworker assignments, because it had taken DCFS at its word that its adoption and implementation of the Reorganization Plan represented the "reasonable efforts" required by this statute. It was only after DCFS' performance had failed so substantially, with no adequate explanation offered by DCFS for that failure and with DCFS' unfulfilled generalized predictions having demonstrated a total lack of credibility, that the preliminary injunction order now on appeal was entered as required to satisfy DCFS' statutory "reasonable efforts" obligation. In doing so this Court (a) rejected plaintiffs' request for an order requiring such assignments to be made within 24 hours as an unrealistic requirement, (b) accepted DCFS' representations that a three-working-day requirement was capable of accomplishment (although DCFS did object to the entry of any such order) and (c) deferred the effective date of the preliminary injunction order by approximately 90 days, thus accepting DCFS' position as to the amount of additional time that it would need for that purpose.

Milton I. Shadur
United States District Judge

Date: July 25, 1990

EXHIBIT 1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

June 21, 1990

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. JESSE E. ESCHBACH, Senior Circuit Judge

ARTIST M., et al., Plaintiffs-Appellees,	)	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
Nos. 90-1742 and 90-1764 v.	)	
GORDON JOHNSON, et al., Defendants-Appellants.	)	No. 88 C 10503
	)	Milton I. Shadur, Judge.

ORDER

The preliminary injunction entered by the district court requires that the Department of Children and Family Services (DCFS) assign a caseworker within three working days from the time plaintiffs' cases are first heard in juvenile court as well as within three working days from the time a previously assigned caseworker relinquishes any portion of a case. DCFS voluntarily instituted a Reorganization Plan which has as its goal the

reduction of delays in caseworker assignment to three to five days in most cases. It is unclear from oral argument before us and from the record what amount of delay currently exists between (1) a hearing in juvenile court and the assignment of DCFS caseworkers to that case, and (2) reassignment of a case to a new caseworker following the relinquishment of any portion of a case by the previously assigned caseworker. The record is also unclear on how far away DCFS is from attaining the goals outlined in that Plan. Accordingly, this appeal is remanded for the limited purpose of permitting the district court to hold an evidentiary hearing, if deemed necessary, and to enter written findings with respect to the extent of the present delay in caseworker assignment and reassignment and the extent to which DCFS has met its goals under the Plan. The district court should also inform us if a preliminary injunction is still necessary. We request that the findings be made as soon as possible, but no later than July 26, 1990.

The defendants' motion to strike pages 463 to 475 of the Appendix to the plaintiffs' brief is denied.

EXHIBIT 2

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

June 27, 1990

CORRECTED

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. JESSE E. ESCHBACH, Senior Circuit Judge

ARTIST M., et al., Plaintiffs-Appellees, Nos. 90-1742 and 90-1764 v. GORDON JOHNSON, et al., Defendants-Appellants.	)	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division. No. 88 C 10503 Milton I. Shadur, Judge.

ORDER

Our order of June 21, 1990 remanded this appeal to the district court for entry of factual findings with respect to the current amount of delay in caseworker assignment and reassignment. We now modify that order and direct the district court to enter written findings on the following factual issues as they existed at the time the injunction issued: (1) the amount of delay between a hearing in

juvenile court and the assignment of DCFS caseworkers to that case, (2) the amount of delay between the time a caseworker relinquishes any portion of a case and the time a new caseworker is assigned, and (3) the extent to which DCFS has met its numerical goals, as set forth in our June 21, 1990 order, under the Reorganization Plan. We request, as before, that these findings be made as soon as possible, but no later than July 26, 1990.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARTIST M., *et al.*,	)	
	)	
Plaintiffs,	)	No. 88 C 10503
v.	)	Hon. Milton I. Shadur
	)	
GORDON JOHNSON, *et al.*,	)	
	)	
Defendants.	)	

STIPULATIONS

Plaintiffs Artist M., *et al.*, by their attorneys, and defendants Gordon Johnson and Gary T. Morgan, by their attorneys, hereby jointly stipulate to the following facts.

Conditions as of December 1988

1. As of December 31, 1988, the Department of Children and Family Services ("DCFS" or the "Department") regularly delayed the assignment of cases to caseworkers capable of initiating child welfare services to the plaintiffs and their families. In most cases, DCFS did not assign a caseworker until at least two weeks after the first Juvenile Court date. In a large number of cases the delays lasted 30-45 days after plaintiffs' cases were initiated in Cook County Juvenile Court, with some delays in excess of 45 days.

2. These delays occurred in cases sent from DCFS's Office of Child Protection ("DCP"), the Department's investigative arm, to one of its Interim Services Teams ("IST"). IST handled new temporary custody cases except

sex-abuse cases. Other court cases, namely protective order and sex abuse cases, were sent from DCP directly to one of DCFS' area offices. There were similar 30-45 day delays in those cases.

3. In IST cases, the IST caseworker retained responsibility for the case for 30-45 days. After IST caseworkers completed their tasks, the IST supervisor called the Service Coordination Unit ("SCU"), which then assigned the case to a caseworker team at the appropriate area office. IST then sent the case file to the supervisor of the team through DCFS's messenger service, which operated three times per week. The supervisor of the team then would assign the case to a caseworker.

Reassignment of Cases

4. Follow-up caseworkers in the four area offices frequently transfer within the Department, take leaves of absence, are terminated, or resign from their positions in DCFS's area offices. (The following discussion will refer to these caseworkers in the aggregate as "absent caseworkers.")

5. As of December 31, 1988, DCFS policy allowed team supervisors 30 days in which to make decisions regarding the reassignment of the absent caseworkers' cases.

6. DCFS's management policy and practice permitted supervisors significant latitude and discretion in decisions regarding reassignment of cases. The cases of absent caseworkers generally were not reassigned for 30 or more days after their absences began.

Changes in DCFS's Caseworker Assignment System

7. In 1988, DCFS administrators became aware of delays in caseworker assignment. As part of their efforts to remedy those delays, on January 1, 1989, the Division of Cook County Operations ("DCCO") initiated use of an Early Response Package for cases transferred from DCP to IST.

8. The Early Response Package contains those investigation materials necessary to obtain a Juvenile Court order, enabling cases to be transferred out of DCP prior to completion of the entire investigation.

9. In February 1989, DCFS began sending certain protective order cases to private agencies under the Family First program, for provision of intensive home-based services by the private agencies.

10. By August 31, 1989, Family First had provided services to 169 families in Cook County under Juvenile Court protective orders.

11. Between January and May 1989, the Department added two new IST teams, bringing the total to four units, with the goal of eventually assigning all court cases to IST.

12. On May 22, 1989, DCP began transferring all new temporary custody cases involving sex abuse to IST.

13. DCFS's Cook County region contains four area offices, covering distinct geographic areas. On June 1, 1989, the four IST teams were geographically aligned with the four Cook County area offices.

14. On July 16, 1989, the DCP teams were geographically aligned with the four area offices.

15. In September 1989, the Department initiated a Home of Relative Initiative, which called for most cases involving children placed in foster care with relatives to be transferred to private agencies for case management and services, with a goal of reducing caseloads across the entire DCFS system.

16. On November 13, 1989, DCP began transferring protective order cases to IST. New court cases (other than previously opened cases, Home of Relative cases, or Family First cases) went from DCP to IST as of that date.

17. During 1989, the DCP and IST administrators monitored initial assignment of caseworkers at IST through, among other means, use of logs which reflected receipt of the case at IST.

18. In December 1989, the IST logs were modified to reflect actual assignment of an IST caseworker.

Conditions as of 1989 and Early 1990

19. Cases transferred from DCP directly to area offices during 1989 experienced delays similar to those in December 1988. Cases transferred from IST to area offices during 1989 experienced average delays of 19 days.

20. In January and February 1990, DCFS sent approximately 165 cases to IST for assignment of a caseworker. In some cases IST logs did not contain adequate information to determine the date on which a caseworker was assigned.

21. DCFS assigned a caseworker within five calendar days of the first court date in 90 (61 percent) of the remaining 146 cases sent to IST in January and February 1990. The Department failed to assign a caseworker within five calendar days in the remaining 56 cases (39 percent).

22. In January and February 1990, DCFS did not assign a caseworker within 10 calendar days of the first court date in 25 cases sent to IST, or 17 percent.

23. In January and February 1990, DCFS did not assign a caseworker within three weeks of the first court date in 14 cases sent to IST, or 10 percent.

24. As of March 2, 1990, cases transferred from IST to area offices were unassigned for an average of 19 days.

25. Defendants did not change DCFS's policy regarding the reassignment of cases previously assigned to absent caseworkers between December 31, 1988, and March 2, 1990. DCFS's practice as of March 2, 1990, left cases previously assigned to absent caseworkers unassigned, on average, for 30 days.

Dated: Chicago, Illinois
July 18, 1990

Respectfully submitted,

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EXHIBIT A

The DCFS February 1990 logs that constitute Exhibit A to the District Court's Findings of Fact are xerox copies of handwritten documents and as such could not be printed. They can be found at pages 35-47 of the appendix to Respondents' Brief in Opposition to the Petition for Certiorari.

SUPREME COURT OF THE UNITED STATES

No. 90-1488

Sue Suter, et al.,

Petitioners,

v.

Artist M., et al.,

Respondents.

ON CONSIDERATION of the motion of respondents for leave to proceed in forma pauperis without an affidavit of indigency executed by the respondents.

IT IS ORDERED by this Court that the said motion, be, and the same is hereby, granted.

May 13, 1991